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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Acceleration of Broadband Deployment: ) WC Docket No. 11-59  
Expanding the Reach and Reducing the Cost of )  
Broadband Deployment by Improving Policies )  
Regarding Public Rights of Way and Wireless )  
Facility Siting )

To: The Commission

**REPLY COMMENTS**

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September 30, 2011

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## EXECUTIVE SUMMARY

It is beyond debate that the nation as a whole, and the constituents of local governments in particular, will be direct beneficiaries of expeditious buildout of wireless broadband facilities. This broadband buildout, mandated by the President and Congress, is expected to bring hundreds of thousands of jobs to cities, towns and rural areas that have been hard hit by the economic downturn. It also will create opportunities for small businesses and economically disadvantaged people, as well as minority groups and people with disabilities. This is why CTIA is troubled by the advocacy of some local government commenters with regard to wireless facilities siting. CTIA believes that the FCC should reject their arguments, discussed in more detail below, and should adopt several changes to the current rules that will accelerate deployment.

CTIA respectfully disagrees with local government commenters' argument that the FCC is precluded from acting here because Section 332(c)(7) denies the FCC virtually all authority to act with respect to tower siting. To the contrary, the courts have made clear that the FCC can issue authoritative interpretations of the Communications Act of 1934, as amended, and adopt substantive rules with respect to how state and local regulators are to carry out their responsibilities under the Act.

The Commission can take several key steps that will both expedite wireless facilities siting and respect the local zoning process. CTIA supports wireless commenters' call to shorten the collocation shot clock and to permit collocations by right, if localities do not voluntarily undertake such measures. CTIA also endorses the suggestion that the FCC clarify that the definition of "collocation" found in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas is incorporated into the collocation shot clock. This would preclude any misunderstandings and ensure the collocation shot clock applies to collocations on buildings, water towers, steeples, flagpoles, and similar locations in addition to collocations installed on towers.

To expedite buildout, CTIA supports a proposal for a categorical exclusion for purposes of environmental processing for the installation of antennas on existing utility poles. Just as the placement of additional wires or cables on poles in an existing aerial corridor is categorically excluded, the Commission should confirm, based on that precedent and its decades of environmental experience, that the addition of antennas to utility poles is likewise categorically excluded.

Several commenters shared CTIA's concern over the manner in which some municipal consultants adversely affect the tower siting process without providing a countervailing benefit. Courts have criticized some of these consulting arrangements. Moreover, many of the services such consultants provide are outside the proper scope of municipal zoning review. CTIA is alarmed that multiple municipalities have chosen consultants who publicly represent themselves as anti-tower crusaders, and who have proven themselves incapable of fairly judging tower applications. As part of its review of the role municipal consultants perform in the tower siting process, CTIA urges the Commission to consider whether particular arrangements between local governments and municipal consultants — where the consultants' fees are involuntarily funded by tower applicants through an escrow arrangement — interfere with the timely buildout of the nation's wireless structure and act as a barrier to the establishment of personal wireless services.

CTIA is encouraged that some local governments appreciate the importance of transparency, streamlining, and accessibility. Large and small jurisdictions have utilized the Internet to provide web access to relevant information. The FCC should encourage local governments to provide as much information as possible to applicants through their websites. Putting such information online improves local processes and is a critical step toward addressing the alleged problem of incomplete applications. The FCC also should encourage local governments, where possible, to develop online application submission procedures, and share its expertise in this area with localities.

While it is important to address challenges posed at the local level, CTIA believes that there is both a need and an opportunity to improve federal agency cooperation. This need is evinced by comments from the mobile wireless industry and from fixed wireless service providers. CTIA agrees with the suggestion that the FCC should support reactivation of the federal working group devoted to rights of way, and that the Bureau of Indian Affairs should be encouraged to defer to Tribal application review determinations. CTIA also supports the call for standardized, consistent processes, fees, leases, application forms, and master contracts for siting on federal property. In addition, CTIA urges the Commission to work with the United States Fish and Wildlife Service to improve response times, standardize reviews, and identify categories of projects not requiring consultation with that agency.

It is crucial that the wireless facilities siting process is further streamlined and improved so that the wireless industry can meet the challenge posed by the President, Congress and the FCC, to complete an accelerated nationwide roll-out of broadband within 5 years. CTIA believes that this NOI is an important first step.

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**REPLY COMMENTS**

CTIA–The Wireless Association<sup>®</sup> (“CTIA”)<sup>1</sup> respectfully submits these reply comments in response to the Commission’s *Notice of Inquiry* concerning public rights of way (“ROW”) and wireless facilities siting.<sup>2</sup> The commenters in this proceeding offer the Commission what appear to be, at first blush, two contradictory views of the wireless facilities siting process. Local government agencies describe a process that works well, in which delays rarely occur — and, when delays are experienced, they stem from wireless applicants’ failure to supply needed information.<sup>3</sup> Viewing the same siting process, the wireless industry describes a process that is rife with uncertainty, delay, needless complexity, and misallocated resources on the part of

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<sup>1</sup> CTIA – The Wireless Association<sup>®</sup> is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> *Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, Notice of Inquiry, 26 FCC Rcd 5834 (2011), 76 Fed. Reg. 28397 (May 17, 2011) (“NOI”).

<sup>3</sup> *See, e.g.*, Comments of Arlington, Texas at 10-11; Comments of Glendale, California at 3; Comments of National League of Cities at 34; Comments of Portland, Oregon at 14.

zoning authorities.<sup>4</sup> It is not quite that simple, of course. Some local government agencies have taken important steps to simplify, clarify, and expedite the tower siting process.<sup>5</sup> Further, some municipal commenters acknowledge the critical importance of broadband buildout. They recognize that broadband infrastructure buildout can have an immediate, positive impact on local constituents and businesses.<sup>6</sup>

However, significant problems remain in local government permitting processes across the nation. Unfortunately, many local government comments reflect an unwillingness to acknowledge that a problem exists, and oppose any effort by the Commission to attempt to free the logjam where it exists by improving the wireless facilities siting process. These commenters largely oppose any further FCC involvement other than the Commission establishing voluntary programs and educational campaigns.<sup>7</sup> In contrast, wireless industry commenters proffer numerous constructive suggestions that the Commission could take to facilitate tower siting

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<sup>4</sup> See, e.g., Comments of AT&T at 2-4; Comments of Verizon and Verizon Wireless (“Verizon”) at 4-11; *see also* Comments of Wireless Communications Association International (“WCAI”) at 3-5.

<sup>5</sup> See, e.g., Comments of National Telecommunications Cooperative Association (“NTCA”) at 2 (reporting that some members have experienced predictable and streamlined processes for both ROWs and wireless tower siting); Comments of Ontario, California at 4-5; Comments of Portland, Oregon at 11-12; Comments of Springfield, Oregon at 7.

<sup>6</sup> The National League of Cities explains, “Local governments . . . understand that affordable broadband stimulates the economy and creates jobs, and they appreciate that broadband’s educational, health, and networking capabilities benefit consumers and make government more efficient and responsive.” Comments of National League of Cities at 2 (footnote omitted). *See also* Comments of Augusta County, Virginia at 2; Comments of Bellevue, Washington at 2; Comments of Corvallis, Oregon at 1; Comments of Ross Township, Pennsylvania at 1.

<sup>7</sup> See, e.g., Comments of Arlington, Texas at 16; Comments of Bellevue, Washington at 8; Comments of Denver, Colorado at 14; Comments of Hoffman Estates, Illinois at 7; Comments of National League of Cities at 51-52; Comments of Portland, Oregon at 21-22; Comments of SCAN at 7; Comments of Tennessee County Highway Officials Association at 10.

now,<sup>8</sup> at a time when the President, the Congress, and the Commission itself all have recognized the need to expedite broadband buildout. CTIA believes that the FCC should reject arguments from local governments that actually will slow broadband deployment, and should adopt several of the changes proposed in the comments that will accelerate deployment.

The benefits of rapid buildout of broadband infrastructure will extend far beyond the benefits that will flow directly from the introduction of ubiquitous broadband wireless service across our nation. Chairman Genachowski recently announced that he had received commitments for 100,000 new broadband-enabled call center jobs over the next two years in communities hard-hit by the economic downturn — places like Jeffersonville, Indiana, West Michigan, Newark, New Jersey, and St. Lucie, Florida.<sup>9</sup> In fact, a recent Deloitte report predicts that broadband wireless investment could account for \$73-151 billion in GDP growth and 371,000-771,000 new jobs in just the next five years.<sup>10</sup> This potential for wireless broadband buildout to create a significant number of new jobs is both exciting and sorely needed in the current economic climate. The Chairman also has emphasized that broadband opens up new opportunities for telecommuting, “provid[ing] new employment options for returning veterans,

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<sup>8</sup> See, e.g., Comments of AT&T at 5, 19-20; Comments of CTIA at 25-43; Comments of Verizon at 7, 9-11, 25-26, 32-36, 39-41; see also Comments of NextG at 12, 28; Comments of NTCA at 3; Comments of PCIA—The Wireless Infrastructure Association and DAS Forum (“PCIA”) at 39-57; Comments of WCAI at 2-3.

<sup>9</sup> FCC Fact Sheet, *FCC Chairman Genachowski Announces 100,000 New Broadband-Enabled Call Center Jobs with Business Leaders* (Aug. 4, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-308896A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308896A1.pdf); FCC News Release, *FCC Chairman Genachowski Announces 100,000 New Broadband-Enabled Call Center Jobs with Business Leaders* (Aug. 4, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-308897A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-308897A1.pdf).

<sup>10</sup> Deloitte, *The Impact of 4G Technology on Commercial Interactions, Economic Growth, and U.S. Competitiveness* at 7-8 (Aug. 2011) (“Deloitte Report”), available at [http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/TMT\\_us\\_tmt/us\\_tmt\\_impactof4g\\_081911.pdf](http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/TMT_us_tmt/us_tmt_impactof4g_081911.pdf).

people with disabilities, and parents who need flexible work schedules.”<sup>11</sup> It also can help move “into the economic mainstream people and organizations who would otherwise participate at a less than optimal level or not at all,” including “minority groups, rural communities, localities with limited access to full [wired] broadband connectivity, and small businesses.”<sup>12</sup>

Despite these overwhelming benefits of broadband wireless buildout, municipalities and local governments have not, in many cases, matched their support of the concept of broadband with actions that would expedite the pace of infrastructure buildout. An expedited local siting process could accommodate meaningful review of proposed sites while, at the same time, allowing the local governments’ constituents to receive broadband — and its direct and indirect benefits — more quickly.

**I. THE COMMENTS UNDERScore KEY AREAS IN WHICH COMMISSION ACTION WOULD MEANINGFULLY ADVANCE THE SITING OF WIRELESS FACILITIES WHILE RESPECTING LOCAL ZONING AUTHORITIES’ PROCESSES AND JURISDICTION**

**A. The Commission Should Further Facilitate Collocation**

Several commenters propose ways to facilitate collocation of antennas. Some suggest shortening the 90-day shot clock to 45 or 60 days, in recognition that collocation should not require as extensive consideration by zoning and land use authorities as construction of new facilities.<sup>13</sup> CTIA supports further shortening of the collocation shot clock. Indeed, in CTIA’s

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<sup>11</sup> Julius Genachowski, Op-Ed, *Expand Broadband to Create Jobs*, USA Today (Aug. 24, 2011), available at [http://www.usatoday.com/news/opinion/forum/story/2011-08-24/FCC-chairman-Expand-broadband-to-create-jobs/50121002/1?csp=34news&utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+News-Opinion+%28News+-+Opinion%29](http://www.usatoday.com/news/opinion/forum/story/2011-08-24/FCC-chairman-Expand-broadband-to-create-jobs/50121002/1?csp=34news&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+News-Opinion+%28News+-+Opinion%29).

<sup>12</sup> Deloitte Report at 14; *see id.* at 14-17.

<sup>13</sup> *See* Comments of AT&T at 19 (proposing a reduction to 60 days); Comments of PCIA (proposing a reduction to 45 days).

initial Petition requesting a 45-day period for action on requests for collocation, CTIA presented evidence that each of the wireless providers surveyed reported receiving collocation zoning approvals within 14 days – and all but one obtained approvals within one week. Other commenters in the instant proceeding support the concept of collocation “by right” without local government review.<sup>14</sup> In addition, AT&T asks the Commission to clarify that the 90-day “shot clock”<sup>15</sup> for collocation applications is “not limited strictly to attachments on an existing structure, but rather encompasses any application that does not require the construction of a *substantial* new facility.”<sup>16</sup>

As CTIA indicated in its comments, the Commission should make it clear that it is prepared to shorten the collocation shot clock period if localities do not voluntarily shorten their own processing times.<sup>17</sup> Likewise, the Commission should encourage local governments to voluntarily permit collocations by right on previously approved towers or structures, but at the same time give notice that it is willing to make such collocations by right mandatory.<sup>18</sup>

CTIA also agrees that it would be beneficial to provide greater clarity concerning the types of applications that qualify as collocations for purposes of the 90-day shot clock. The *Shot Clock Declaratory Ruling* drew on the Nationwide Programmatic Agreement for the Collocation

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<sup>14</sup> See Comments of PCIA at 37-38.

<sup>15</sup> *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994 (2009) (“*Shot Clock Declaratory Ruling*”), recon. denied, 25 FCC Rcd 11157 (2010), petition for review pending sub nom. *City of Arlington, Texas v. FCC*, No. 10-60039 (5th Cir. filed Jan. 21, 2011).

<sup>16</sup> Comments of AT&T at 19 (emphasis in original).

<sup>17</sup> See Comments of CTIA at 31-34.

<sup>18</sup> See *id.*

of Wireless Antennas<sup>19</sup> for its standard as to when a proposed facility would qualify as a collocation. The Commission stated that a proposal would be considered a collocation “if it does not involve a ‘substantial increase in the size of a tower’” as defined in the Collocation NPA.<sup>20</sup> Collocations are not limited to towers, however — the Collocation NPA defines collocations as antenna installations on buildings or non-tower structures, as well as on existing towers.<sup>21</sup> The Commission should clarify that the Collocation NPA’s definition of collocation was intended to be integrated *in toto* into the 90 day Shot Clock. This would ensure that the zoning process is properly subject to the collocation shot clock when antennas are proposed to be collocated on buildings, water towers, church steeples, flagpoles, and similar locations.<sup>22</sup>

**B. The Commission Should Take Steps to Make Pole Attachments More Available**

Sacred Wind Communications, Inc. asks the Commission to designate existing utility poles for “categorical exclusions [sic] from applicable survey requirements,” which would facilitate “new construction of essential facilities without disturbing the land itself.”<sup>23</sup> CTIA believes that the Commission should consider whether putting antennas on existing utility poles should be deemed a categorical exclusion. Such an exclusion is warranted, given that many

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<sup>19</sup> 47 C.F.R. Part 1, App. B—Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (“Collocation NPA”).

<sup>20</sup> *Shot Clock Declaratory Ruling*, 24 FCC Rcd at 14012 ¶ 46 & n.146 (*citing* Collocation NPA”, Section I (Definitions), Subsection C). *See also* Collocation NPA, Section III, Subsection A.1; *id.* Section IV, Subsection A.2.

<sup>21</sup> Collocation NPA, Section I (Definitions), Subsection A (“‘Collocation’ means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.”)

<sup>22</sup> *See* Comments of PCIA at 11 (noting that collocations include “sites located on towers or buildings, water towers, steeples and the like”).

<sup>23</sup> *See* Comments of Sacred Wind Communications at 15.

utility poles are of a standard height and configuration, and pole attachments, like other collocations, usually do not require any significant disruption of the soil. Indeed, the Commission has expressly stated that no EA is necessary for similar actions, such as installation of additional cables to an existing aerial cable corridor.<sup>24</sup> Moreover, CTIA is unaware of the Commission previously finding that an attachment to an existing pole has raised environmental issues.<sup>25</sup> A confirmation that pole attachments are categorically excluded from some or all environmental processing would further expedite buildout. CTIA suggests that the Commission advance this issue in the Notice of Proposed Rulemaking that may result from this NOI.

**C. The Role of Municipal Consultants Must Be Examined to Determine What Steps May Be Taken to Assure Their Actions Do Not Impede Nationwide Infrastructure Buildout**

Several commenters, along with CTIA,<sup>26</sup> identify certain arrangements involving municipal communications consultants as having adversely affected the siting process without a countervailing benefit.<sup>27</sup> These commenters trace the source of the problem to the unusual economic relationship between the municipality, the consultant and the applicant — although the consultant is hired by and advises the municipality on wireless facilities siting requirements and plays a key role in reviewing applications, its fees typically are paid by the applicant through an

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<sup>24</sup> See Section 1.1306 note 1.

<sup>25</sup> From an environmental standpoint, antennas mounted on utility poles have the same negligible impact as adding aerial wires or cables to an existing aerial corridor.

<sup>26</sup> See Comments of CTIA at 21-23.

<sup>27</sup> See Comments of AT&T at 4, 15 n.21, 17-18; Comments of PCIA at 23-36, Appendix B at 4-6, 11-18; Comments of Verizon at 5-7. These comments are limited to the particular consulting model described below and are not directed at local governments' use of outside consultants without a fee arrangement that could provide a financial incentive to lengthen the proceedings. See also Reply Comments of Cityscape Consultants, Inc. at 2-3 (filed Aug. 29, 2011) (distinguishing Cityscape, which charges fixed fees and does not recommend use of an escrow account, from the problematic consulting model).

escrow account. The applicant's payment of the consultant's fee, in such cases, is a condition of the municipality's grant of a permit. As a result, the consultant has no economic constraints on its review and may make the process as complex and lengthy as possible. This leaves the applicant with the Hobson's choice of either capitulating to unreasonable requests for more information (and incurring escalating municipal consultant fees) or seeking clarification or resolution of a disputed issue without submitting the information demanded by the consultant (and, again, being liable for even larger consultant fees).

Indeed, the dynamics of the municipal consultants' relationship with the applicant and the municipality underlay a key case cited by CTIA and others, in which a federal court issued a scathing opinion regarding the use of a consultant with such perverse incentives.<sup>28</sup> It is clear from courts' opinions, and from the filings in this proceeding, that the improper use of certain consultancies can and do cause unnecessary complexity and delay in the local tower siting process.

Much of what such consultants do for municipalities and local jurisdictions falls well outside the appropriate scope of municipal review and is squarely within the purview and expertise of the FCC. In its website promotional materials, The Center for Municipal Solutions ("CMS") claims that a municipality needs to hire it to provide the following services:

[M]ost communities do not have the expertise in-house to perform the type review and analysis needed, e.g. RF propagation analysis, structural analysis, RF radiation emissions, and the need to have this done is precipitated by the applicant who will be the financial beneficiary of the permit . . . that is normally granted into perpetuity.<sup>29</sup>

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<sup>28</sup> See *MetroPCS New York, LLC v. City of Mount Vernon*, 739 F. Supp. 2d 409 (S.D.N.Y. 2010), discussed in Comments of CTIA at 21-23.

<sup>29</sup> CMS Website, *Misconceptions about Regulating Towers and Wireless Facilities*, <http://www.telecomsol.com/misconceptions.html> ("CMS Misconceptions page").

None of these services is necessary. Applicants provide the local municipalities with maps that accurately predict proposed coverage and localized gaps in service that the proposed facility is designed to cover. These maps utilize industry accepted standards and often are certified by a professional engineer (“P.E.”) as to their veracity. If localities had any concerns over coverage issues, they could contact the FCC for further guidance.<sup>30</sup>

Applicants proposing to construct new towers use recognized national standards of construction<sup>31</sup> and typically accompany their submissions with a P.E.’s certification that the tower will meet all applicable construction regulations. RF radiation emissions limits are under the exclusive jurisdiction of, and have been formulated and enforced by, the FCC for decades.<sup>32</sup> To be fair, it is doubtful that any private enterprise could match the combined wireless expertise and experience that the Wireless Telecommunications Bureau and the Office of Engineering and Technology have amassed over the last forty years.

Should a local government seek to obtain consulting services, principles of fair play and due process mandate that a fair and unbiased consultant be selected. Unfortunately, some municipal consultants believe the review process is adversarial. CMS, for example, has publicly

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<sup>30</sup> CTIA is aware of CMS’s belief that P.E. verifications do not assure that the representations are true and correct. Given the criticism leveled at CMS’ engineering expertise in *T-Mobile Northeast LLC v. Inc. Vill. of East Hills* and *MetroPCS N.Y., LLC v. Vill. of E. Hills*, cited in note **Error! Bookmark not defined.** above, this allegation is misplaced and unconvincing.

<sup>31</sup> See, e.g., ANSI/EIA/TIA-222, Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, available from <http://www.tiaonline.org/standards/catalog/search.cfm>.

<sup>32</sup> 47 U.S.C. § 332(c)(7)(B)(iv). See also 47 C.F.R. §§ 1.1307(b), 1.1310, 2.1093; OET Bulletin 65, *Questions and Answers about Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields* (4th Ed. 1999), available at [http://transition.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet56/oet56e4.pdf](http://transition.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet56/oet56e4.pdf).

described its agenda: “In all but the most rural locales today, a new tower should be an aberration . . . .”<sup>33</sup>

Local zoning authorities may not hide behind consultants to evade their legal obligations under the Act, and they should not be allowed to recover costs for site reviews that exceed the scope of their authority. The Communications Act limits the subject matters that local zoning authorities may review, imposes obligations on timeliness, and provides no entitlement to a blank check for the carrier to sign, regardless of whether it is the municipality’s own employee, or its outside consultant.

The Commission should take steps to ensure that municipal consultants who evince a bias against tower construction — and whose anti-tower “consultations” are involuntarily funded by tower applicants — do not interfere with the timely buildout of the nation’s wireless broadband infrastructure. These steps should include, at a minimum, seeking comment in a subsequent Notice of Proposed Rulemaking on whether particular consultant arrangements may act as a barrier to the introduction of personal wireless services.

## **II. THE FCC HAS AUTHORITY TO INTERPRET AND IMPLEMENT PROVISIONS OF THE COMMUNICATIONS ACT AS NECESSARY TO ENSURE TIMELY NATIONWIDE BROADBAND BUILDOUT**

CTIA respectfully disagrees with the National League of Cities and other commenters concerning their interpretation that Section 332(c)(7) handcuffs the Commission’s ability to lawfully act in this area. According to the National League of Cities, the Commission only has authority to address one of the five limitations on the local zoning process in Section 332(c)(7)

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<sup>33</sup> CMS Website, *Towers and Wireless Facilities . . . Their Impact and How to Deal with It*, <http://www.telecomsol.com/twf-howtodealwithit.html>.

— *i.e.*, environmental effects of RF emissions — and that “[a]ll other issues are left to the courts based on local facts and circumstances.”<sup>34</sup>

To the contrary, the FCC has authority to issue authoritative interpretations of the Communications Act of 1934, as amended, that are entitled to substantial deference by courts, as CTIA demonstrated in its Comments.<sup>35</sup> The United States Supreme Court and Courts of Appeals have made clear that the FCC has authority to establish authoritative statutory interpretations and adopt substantive rules that govern how *state and local regulators* are to carry out their own authority under the Communications Act. In *AT&T Corp. v. Iowa Utilities Board*, the Supreme Court held that the FCC’s rulemaking authority concerning the provisions of the Act apply with full force to the “implementation of the local-competition provisions” that are administered by the states.<sup>36</sup> Likewise, the Sixth Circuit upheld the Commission’s adoption of rules governing cable franchise decisions that the Communications Act puts in the hands of local authorities, even though the statute did not specifically direct the FCC to adopt such rules.<sup>37</sup> The absence of any specific rulemaking mandate regarding the statute’s provision concerning local franchising decisions, according to the court, “does not divest the [Commission] of its express authority to prescribe rules interpreting that provision.”<sup>38</sup> Most relevant to this proceeding, the Commission relied on this authority in affirming its holdings in the *Shot Clock Declaratory Ruling*, in which it

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<sup>34</sup> Comments of National League of Cities at 63.

<sup>35</sup> Comments of CTIA at 25-27.

<sup>36</sup> 525 U.S. 366, 380 (1999).

<sup>37</sup> *Alliance for Community Media v. FCC*, 529 F.3d 763, 774 (6th Cir. 2008).

<sup>38</sup> *Id.*; see also *Building Owners and Managers Ass’n International v. FCC*, 254 F.3d 89, 92 (D.C. Cir. 2001).

established reasonable time periods for local zoning authority action on siting applications to facilitate timely wireless broadband deployment.<sup>39</sup>

### **III. THE COMMISSION CAN AND SHOULD TAKE IMMEDIATE STEPS TO ENCOURAGE STREAMLINED PROCEDURES AND ONLINE ACCESS**

Some of the questions posed in the NOI address the extent to which local governments weigh transparency and procedural streamlining in their ROW and wireless facility siting processes, and the extent to which relevant laws and regulations, application requirements, forms, and other information are made readily available.<sup>40</sup> CTIA finds it encouraging that some local governments stress the importance of transparency, streamlining, and accessibility.

As one of just a few examples, Montgomery County, Maryland apparently has established a “one stop shop” for all construction and land use permits in the county that makes forms, documents, and other information readily available online as well as at its offices. There is a dedicated webpage for each type of permit, providing access to the relevant “application, fee schedules, bond requirements, applicable codes and standards,” with additional links to flowcharts, guidance, contact information, and online status information.<sup>41</sup>

While a highly detailed system such as Montgomery County’s might be economically prohibitive for some smaller communities,<sup>42</sup> even small communities can provide considerable amounts of information online. For example, the City of Lenexa, Kansas reports that it places online its City Code, Right of Way Permit Information and Application Form, Planning and

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<sup>39</sup> *Shot Clock Declaratory Ruling*, ¶¶ 23-26.

<sup>40</sup> NOI ¶¶ 14, 22.

<sup>41</sup> Comments of Montgomery County, Maryland at 19-20.

<sup>42</sup> *Id.* at 21.

Zoning Applications and Forms, and all of the relevant fees.<sup>43</sup> Lenexa says that applications are reviewed and processed promptly, with ROW applications typically processed within a day.<sup>44</sup>

The comments filed by Montgomery County and Lenexa suggest that the goal of a highly transparent and accessible local zoning and permitting process is readily attainable. While the appropriate scope and degree of interactivity of an agency's website will depend on many factors, the Commission should encourage local governments to provide as much information as possible, and, where feasible, to establish interactive transactional websites that show the progress of applications or docketed proceedings, similar to those that the Commission has established over the last decade.

Lenexa found that putting its information online has improved its processes “significantly” and “allowed the process to move more quickly.”<sup>45</sup> Providing web-based accessibility to specific informational requirements is a critical step to improving the alleged “problem” identified by some municipalities in this proceeding of incomplete information from applicants. Lenexa's experience suggests that when such information is placed on the web, applicants respond quickly and provide the requested information.<sup>46</sup>

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<sup>43</sup> Comments of Lenexa, Kansas at 3-4.

<sup>44</sup> *Id.* at 4.

<sup>45</sup> *Id.* at 5.

<sup>46</sup> While numerous state and local governmental commenters complain that applicants fail to provide the required information, applicants have no incentive to act in a manner that would elongate the proceedings. One matter is beyond debate: applicants want to build their proposed facilities as rapidly as possible. For example, CMS correctly observes that “*Time* is the primary issue for the applicant.” CMS Misconceptions page, cited at note 29 above (emphasis in original). It would appear nonsensical, then, for applicants to deliberately slow down the process by providing inadequate information. Lenexa's experience suggests that the issue may stem from municipalities not providing adequate access to their informational requirements and processes.

The Commission also should encourage local government development of online application form submission procedures, to the extent such processes are affordable. The Commission has had extensive experience with such processes and can share its expertise with local governments in workshops or webinars concerning how best to develop and implement online filing procedures.

#### **IV. THE COMMISSION SHOULD ENCOURAGE CONSISTENT FEDERAL AGENCY COOPERATION SO FEDERAL LANDS CAN BE USED FOR NEW TOWERS AND COLLOCATIONS**

The record demonstrates that there is both a need and an opportunity to improve federal agency cooperation and enhance consistency. In addition to the wireless mobile industry commenters that documented these problems,<sup>47</sup> Sacred Wind's comments demonstrate that these challenges are even more acute when seeking to provide fixed wireless service to Native Nations, due to a process that contains multiple layers of federal and Tribal agencies, including the Bureau of Indian Affairs.<sup>48</sup>

Sacred Wind suggests that the Commission should support reactivation of the NTIA-led Federal Rights of Way Working Group and seek to reduce redundancy in ROW application review by encouraging the Bureau of Indian Affairs to defer to Tribal application review determinations.<sup>49</sup> These are worthy objectives, and CTIA urges the Commission to take steps to implement them.

Improvement of the difficult process of siting on federal lands is critical to the mobile wireless industry as well. Verizon cites one case where it has been trying *for over eight years* to

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<sup>47</sup> See, e.g., Comments of AT&T at 18; Comments of PCIA at 53-54; Comments of Verizon at 14-16.

<sup>48</sup> Comments of Sacred Wind Communications at 5-7, 11-12, 16-17.

<sup>49</sup> *Id.* at 13, 16-17.

establish a wireless facility along a major Interstate highway that will allow Verizon Wireless and several other carriers to provide service in rural Virginia, but it has been unable to obtain permission from the Forest Service to date.<sup>50</sup> Verizon also describes the challenges it encounters in attempting to site on federal military bases.<sup>51</sup> Verizon believes that standardized, consistent processes and fees, with a standardized lease agreement, application form, and master contracts would be a significant improvement.<sup>52</sup> CTIA supports these proposals, consistent with its Comments.<sup>53</sup>

In addition, Verizon urges the Commission to work with the U.S. Fish and Wildlife Service (“USFWS”) to streamline the environmental review process and, in particular, to seek to identify “low risk projects that can bypass the need for USFWS consultation,” and to establish reasonable periods for USFWS review where it is needed.<sup>54</sup> Obviously, the public interest would be served by working out criteria for determining when USFWS review will not be needed, and establishing reasonable and reliable timelines for review where needed. Such steps also would benefit the USFWS, which does not have an unlimited budget; and, as such, it could better prioritize the application of its internal resources. Accordingly, CTIA urges the Commission to work with USFWS to improve response times, standardize reviews, and identify categories of low-risk projects that do not require USFWS consultation.

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<sup>50</sup> Comments of Verizon at 15.

<sup>51</sup> *Id.* at 15.

<sup>52</sup> *Id.* at 15-16.

<sup>53</sup> Comments of CTIA at 44-45.

<sup>54</sup> Comments of Verizon at 13-14.

## V. CONCLUSION

For the reasons set forth above, CTIA urges the Commission to advance the efforts and initiatives described herein to facilitate and accelerate wireless broadband deployment.

Respectfully submitted,

**CTIA–THE WIRELESS ASSOCIATION<sup>®</sup>**

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September 30, 2011